

**Supplemental Letter of Findings: 02-20130134
Corporate Income Tax
For the Tax Years 2007-2010**

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ISSUE

I. Corporate Income Tax—Throw-Back Sales.

Authority: [IC 6-8.1-5-1](#).

Taxpayer protests the inclusion of Ohio and Minnesota throw-back sales in its Indiana sales numerator that Taxpayer argues were not required to be thrown back.

STATEMENT OF FACTS

Taxpayer is a corporation that is a manufacturer domiciled in Indiana with business operations in Indiana and other states. Taxpayer is a wholly owned subsidiary corporation. Taxpayer's parent corporation does not file a tax return in Indiana. However, Taxpayer's parent corporation has two other subsidiary corporations that also conduct business in Indiana that have elected to file a consolidated Indiana adjusted gross income tax return together with Taxpayer. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns for the 2007 to 2010 tax years.

After reviewing Taxpayer's federal and state income tax returns and supporting information, the Department made adjustments to the calculation of the Indiana consolidated group's adjusted gross income tax. Specifically, the Department increased Taxpayer's sales factor apportionment numerator to include the throwback to Indiana of sales destined to several foreign states, because the Department found that Taxpayer's activities in those states did not exceed the protection of Public Law 86-272. As a result of the audit adjustments, the Department recalculated the consolidated group's Indiana apportioned business income and net operation loss deductions for the 2008 to 2010 tax years and issued an assessment of additional adjusted gross income tax for the 2007 tax year. Taxpayer protested. An administrative hearing was conducted, and a Letter of Findings was issued December 20, 2013.

Taxpayer requested a rehearing. Taxpayer's representatives explained the basis for their rehearing request and presented Ohio income tax returns and Minnesota income tax returns with its request for a rehearing. The Department granted Taxpayer's rehearing request in part in regards to Taxpayer's provision of the Ohio and Minnesota income tax returns. No administrative hearing was held, the administrative decision was written based upon the information provided with the rehearing request, and this Supplemental Letter of Findings results.

I. Corporate Income Tax—Throw-Back Sales.

DISCUSSION

Taxpayer asserts that the Department's audit has incorrectly computed its Indiana apportionment sales tax numerator by including throw-back sales from Ohio and Minnesota.

As a threshold issue, it is Taxpayer's responsibility to establish that the tax assessment is incorrect. As stated in [IC 6-8.1-5-1\(c\)](#), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Ohio

During the original protest hearing, Taxpayer was asked to provide any documentation that establishes that it had business activities in the particular state and that it was subject to tax in that state based upon its business activities in that specific state. In response, during the course of the protest, Taxpayer presented Ohio Corporate Franchise Tax Reports. The Letter of Findings incorrectly designated these reports as tax returns for the 2008 and 2009 tax years. While the forms themselves were printed and designated as a "2008 Corporate Franchise Tax Report" and a "2009 Corporate Franchise Tax Report," these forms actually represented returns filed for the 2007 and 2008 Tax Years. Therefore, Taxpayer's protest in the Letter of Findings incorrectly sustained Taxpayer's protest for the 2008 and 2009 tax years.

Taxpayer's documentation demonstrated that Taxpayer operated a business enterprise and/or conducted business activity in Ohio for the 2007 and 2008 tax years, that Ohio "franchise tax returns" were filed for the 2007 and 2008 tax years, and that the taxes imposed were a result of Taxpayer's business activities or enterprises in Ohio for the 2007 and 2008 tax years. Accordingly, Taxpayer's protest to the imposition of tax resulting from Taxpayer sales to Ohio is correctly sustained for the 2007 and 2008 tax years.

Minnesota

During the original hearing process, Taxpayer was asked to provide any documentation that establishes that it had business activities in the particular state and that it was subject to tax in that state based upon its business

activities in that specific state. During the original hearing process, Taxpayer did not present information for Minnesota, and Taxpayer's protest was denied in regards to its Minnesota sales.

With its rehearing request, Taxpayer presented Minnesota Corporate Franchise Tax Returns for the 2007, 2008, and 2009 tax years. The Minnesota tax returns were filed to report a "franchise tax that was based upon net income."

Based upon the documentation presented, Taxpayer had nexus with Minnesota for the 2007, 2008, and 2009 tax years. Thus, Taxpayer was "taxable" in the state of Minnesota for these years. Therefore, Taxpayer's protest to the imposition of tax resulting from the Department's inclusion of Taxpayer sales to Minnesota as sales thrown back to Indiana for the 2007, 2008, and 2009 tax years is sustained.

FINDING

The Department's original decision in the Letter of Findings incorrectly sustained Taxpayer's protest to the imposition of tax resulting from Taxpayer's sales to Ohio for the 2008 and 2009 tax years being thrown back to Indiana. Taxpayer's protest to the imposition of tax resulting from Taxpayer sales to Ohio is correctly sustained for the 2007 and 2008 tax years. Taxpayer's protest to the imposition of adjusted gross income tax resulting from the Department's including Taxpayer's sales to Minnesota for the 2007, 2008, and 2009 tax years being thrown back to Indiana is sustained.

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